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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1945

No. [redacted] 25

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as Members of and Constituting said Commission, and ALASKA PACKERS ASSOCIATION, a corporation, ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Petitioners,

vs.

FRANK L. ARAGON and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL NO. 5 on Behalf of Applicants,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

E. COKE HILL,
Hobart Building, San Francisco 4, California,
Attorney for Alaska Unemployment Compensation Commission.

MARSHALL P. MADISON,
FRANCIS R. KIRKHAM,
MELVIN E. MENSOR,
Standard Oil Building, San Francisco 4, California,
Attorneys for Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company.

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vs.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The above named petitioners respectfully pray that a writ of certiorari issue to review the decree of the United

States Circuit Court of Appeals for the Ninth Circuit entered in the above entitled cause (R. 793), reversing the decree of the District Court of the United States for the Territory of Alaska (R. 719), which affirmed the findings and decision of the Alaska Unemployment Compensation Commission (R. 644).

OPINIONS BELOW.

The decision and opinion of the Referee appointed by the Unemployment Compensation Commission is at R. 608-643. The decision of the Commission is at R. 644-649. The opinion (R. 692-710) and findings of fact and conclusions of law (R. 711-718) of the District Court are not reported. The opinion of the Circuit Court of Appeals (R. 770-788) and the dissenting opinion of Judge Healy (R. 788-793) are reported in 149 F.(2d) 447.

JURISDICTION.

The decree of the Circuit Court of Appeals was entered May 15, 1945 (R. 793-794). Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C. 347).

STATUTE INVOLVED.

Section 5(d) of the Alaska Unemployment Compensation Law (Alaska Statutes, Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws of 1939) provides:

"*Disqualification for Benefits.* An individual shall be disqualified for benefits:

* * * * * * * *

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute; * * *."

Other pertinent provisions of the Alaska Act are copied in the appendix to this petition.

STATEMENT OF THE CASE.

Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company (hereinafter called "employers") operate salmon canneries in Chignik, Karluk and Bristol Bay, Alaska. The individual respondents are salmon cannery workers, hired out of San Francisco, who were employed by employers during the 1939 season (R. 646, 712). Respondent, Alaska Cannery Workers Union, Local No. 5, is the bargaining agent of the individual respondents (R. 712).

In 1939, as had been the practice in previous years (R. 713-714), employers entered into an agreement with respondent union for the employment of men in the 1939 Alaska operations (R. 714). After the close of the 1939 season this agreement was terminated (R. 714), and thereafter negotiations commenced at San Francisco looking toward the execution of an agreement covering the 1940 operations (R. 714, 165, 262-263, 610). Employers were

represented by Alaska Salmon Industry Inc., a corporation organized to handle labor negotiations of the salmon industry on the Pacific Coast (R. 260-261). The employees were represented by the union. Controversy arose. The union demanded increased wages and other working conditions more favorable than those provided in the 1939 agreement (R. 317, 614, 714). The employers, having suffered losses during the preceding year, proposed reductions (R. 243-244, 572, 615).

In Alaska the fishing and canning industry is seasonal. The seasonal periods for the three localities here involved, as fixed by the Commission pursuant to the provisions of Section 3(c) of the Alaska Act,[1] are: at Karluk from April 5 to September 5; at Chignik from April 1 to September 10, and at Bristol Bay from May 5 to August 5.[2] As negotiations continued the time approached when the expeditions would have to leave. On April 3 the employers notified the union that if operations were to be carried on at Karluk it would be necessary to reach an agreement by April 10; and if operations were to be carried on at Chignik it would be necessary t reach an agreement by April 12.

In the meantime, the union notified the employers that further negotiations (on all but certain subsidiary matters) would be carried on at Seattle (R. 321-322). The employers concurred and their representatives continued negotiations in both San Francisco and Seattle (R. 333,

[1]Appendix, p. ii.

[2]Benefit regulation No. 10, R. 199, 201. Karluk is on Kodiak Island, and Chignik on the Alaska Peninsula, both on the Pacific side of the Alaska Peninsula. Bristol Bay is on the northern side of the Peninsula, opening into the Bering Sea.

339-340). Proposals and counter proposals continued but the parties were unable to settle their dispute and the respective deadlines for Karluk and Chignik came and passed with no agreement reached.[3]

Further meetings were held in an effort to agree on terms for work at Bristol Bay (R. 372-377), and on April 26 the employers notified the union that unless agreements could be reached by May 3 no expedition to Bristol Bay could be undertaken (R. 378). As this day approached further communications were sent by the employers urging that negotiations be concluded (R. 382-393c); meetings were held; definite and unqualified written proposals were made by the employers (R. 393e, 395-491); federal officials offered their services in an attempt to bring about an agreement and participated in meetings (R. 236, 499-502). The dispute continued, however, and the deadline for Bristol Bay came and passed.

Negotiations continued at Seattle and numerous meetings were held up to May 29, when an agreement was finally reached as to workers out of Portland and Seattle, but expressly excluding workers out of San Francisco.[4]

Immediately after May 3—the last deadline date—and prior to the conclusion of the Seattle negotiations, respondents filed claims with petitioner, the Unemployment Compensation Commission of Alaska, for unemployment compensation. The Commission held respondents disqualified for benefits for the statutory period of eight weeks,

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[3]The negotiations and the matters which were the subject of the dispute are summarized in the findings of the Referee (R. 613-627), and in the opinion (R. 697-699), and findings (R. 713-716) of the District Court.

[4]R. 614-615, 627, 84-86, 90-94, 98-102, 141, 190-191, 339-341, 503.

under the provisions of Section 5(d) of the Alaska Act, supra.[5]

Respondents asked for a hearing, asserting that they were not engaged in, and their unemployment was not due to, a labor dispute (R. 3, 4-5). A hearing on these issues was granted and held before a Referee appointed by the Commission (R. 25-608).[6]

At the hearing respondents contended that no "labor dispute" within the meaning of the Act existed, because the situation was one where the employers simply refused to negotiate an agreement, or where the parties simply failed to arrive at a contract; that the employer-employee relationship terminated at the close of the 1939 season and no labor dispute can exist without the interruption by strike or work stoppage of an existing employer-employee relationship; that if a labor dispute existed, it was not "in active progress" at the factory, establishment or other premises at which the workers were last employed after the respective deadline dates, since the dispute ended on those dates; and that, finally, respondents' unemployment was not "due" to the dispute, because the employers did not negotiate in good faith but intended to, and did, abandon their operations for reasons other than the labor dispute (R. 29-30, 202-203, 204-205, 612).

The Referee found that "There is no evidence to support the Union's contention that the Employers acted in

[5]This initial determination of the Commission, provided for in Section 6(b) of the Alaska Act (Appendix, p. iii), does not appear in the record. It is referred to, among other places, in the decision by the Referee, R. 611-612, 634, and in the opinion, R. 694, and findings, R. 711-712, of the District Court.

[6]This was in accordance with Section 6(c) and (d) of the Alaska Act, Appendix, p. iv.

bad faith in the course of the negotiations" (R. 628); that "All operations contemplated by the Employers and the Union for 1940 were abandoned for the reason that a mutually satisfactory working agreement was not negotiated by the dates set by the Employers, as the 'deadline' for the respective districts" (R. 633); that "A fair consideration of all the evidence submitted leaves no escape from the conclusion that a labor dispute existed and was in active progress between the Employers and the Union up to the expiration of the dates fixed by the Employers for the consummation of the working agreements for the respective plants" (R. 638); but that "the labor dispute ceased to be in active progress," as to the three districts, upon the expiration of the respective "deadline dates," since, upon those dates, "the dispute which had raged between [the Employers] and the Union" came to an end (R. 640). Accordingly, the Referee ordered that compensation be denied from the opening of the season up to the respective deadline dates, but be allowed for the balance of the season (R. 642-643).

Respondents, satisfied with this decision, did not appeal (R. 645). The employers appealed to the full Commission (R. 645). The Commission held that a labor dispute existed and continued, and that respondents' unemployment was due to that dispute (R. 644-649). Compensation accordingly was allowed, to commence after the expiration of eight weeks (R. 649).

The respondents petitioned for review in the District Court in accordance with the provisions of section 6(h) and (i) of the Alaska Act,[7] repeating the contentions they

[7]Appendix, pp. v-vi.

had made before the Referee. The District Court overruled these contentions and affirmed the findings and conclusions of the Commission (R. 692-718).

Respondents appealed, raising identically the same contentions.[8]

The Circuit Court of Appeals gave no consideration to any point raised and passed upon in the tribunals below or raised in that court. Instead, it reversed the judgment upon a volunteered ground. It pointed to the statutory language that "an individual shall be disqualified for benefits * * * for any week * * * that his * * * unemployment is due to a labor dispute which is in active progress at the factory * * * at which he is or was last employed," and held that since the dispute here was "at" San Francisco and Seattle, and not physically "at" the Alaska plants, the disqualification did not apply (R. 774-777, 779, 780-781, 787).

The Circuit Court of Appeals went further. It devoted more than nine pages of its opinion (R. 778-787) to a statement that the point upon which it decided the case was in fact raised and considered "throughout the litigation" (R. 786).

Judge Healy dissented (R. 788-793). He pointed out that the ground of decision was "volunteered" by the majority of the court (R. 788); that "Unless we choose to misunderstand we can not mistake the propositions of law and fact upon which review of the Commission's deter-

[8]The assignment of errors in the Circuit Court of Appeals (R. 722-745) except for minor and unsubstantial differences, is a copy of the petition for review in the District Court (R. 650-672).

mination was sought" (R. 790). He expressed the further views (R. 791-793):

> "This case is not one originally cognizable by the court. It is purely a review proceeding. The act provides [Section 6(h)] that judicial review of a decision 'shall be permitted only if any party claiming to be aggrieved thereby has exhausted his administrative remedies.' I think it is clear that no issue may be urged on review that was not squarely presented to the Commission. The court, no less than the parties, is foreclosed from injecting issues not so presented. Yet this court has not only done that, it has decided the spurious issue without benefit of argument on the part of counsel, and without giving the Commission an opportunity to be heard.
>
> * * * * * * *
>
> Being of the belief that the question made the basis of the majority decision is not properly before us, I refrain from discussing it beyond saying that it distorts the statutory policy and ignores the actualities of this seasonal operation. * * * The findings of the Commission on the questions actually presented to it are supported by evidence, and I see no sufficient reason for disturbing the administrative decision."

QUESTIONS PRESENTED.

1. Did the Circuit Court of Appeals err in holding that the question decided by it was raised before and considered by the Commission and the District Court, and was raised in the Circuit Court of Appeals?

2. Did the Circuit Court of Appeals, in stating contrary to the fact that said question was raised before and con-

sidered by the Commission and the District Court, and was raised in the Circuit Court of Appeals, so far depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision?

3. Did the Circuit Court of Appeals err in reversing the decree of the District Court and the findings and decision of the Alaska Unemployment Compensation Commission upon a ground not raised in, or considered by, the Commission or the District Court?

4. Did the Circuit Court of Appeals, in reversing the findings and decision of the Commission upon a ground not raised in or considered by the Commission, err in that it failed to give effect to the requirement of the Alaska Act, and of the general law, that parties shall exhaust their administrative remedies before resort to the court, and to the requirements of the Alaska Act that the determination whether claims are properly payable under the Act shall be first made by the Commission, and that the hearing in court shall be confined to "review" of the Commission's decision?

5. Did the Circuit Court of Appeals, in reversing the findings and decision of the Commission upon the ground that the dispute was not "at the factory, establishment or other premises" at which respondents were last employed, err in that it failed to give effect to the rule that an administrative finding, if it has warrant in the facts of record and a reasonable basis in law, is conclusive upon the court on review?

6. Did the Circuit Court of Appeals err in failing to hold that the Commission's findings were supported by the evidence and have a reasonable basis in law and are, therefore, conclusive upon the court on review?

7. Did the Circuit Court of Appeals err in holding that the disqualification provided in Section 5(d) of the Alaska Act is not applicable unless the labor dispute physically takes place at the particular factory, establishment or other premises at which the particular claimant was last employed?

8. Did the Circuit Court of Appeals err in failing to affirm the decision of the District Court which sustained the findings and decision of the Commission?

REASONS FOR GRANTING THE WRIT.

1. **IN MISREPRESENTING THE RECORD AND HOLDING, CONTRARY TO THE FACT, THAT THE POINT UPON WHICH IT DECIDED THE CASE HAD BEEN RAISED IN AND CONSIDERED BY THE COMMISSION AND BY THE DISTRICT COURT, AND HAD BEEN RAISED IN THE CIRCUIT COURT OF APPEALS, THE COURT BELOW SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.**

The Circuit Court of Appeals, at R. 777-787, holds that the question as to the place of dispute was raised and considered throughout the proceedings. The court refers to and quotes excerpts from the record and from the briefs of the parties filed in the Circuit Court of Appeals.

The Record.

In the footnote we supply the record references for each of the quotations appearing in the opinion.[9] In each of these quotations the phrase "at the factory," etc., is quoted, and the word "at" is emphasized by italics, solid capitals, or quotation marks. This Court, upon examination of the record, will see that the quotations are simply of statements where the statutory language happens to have been used in the assertion of one or another of the questions which were in fact raised, namely, whether a "labor dispute" existed, whether it was "in active progress," and whether respondents' unemployment was "due" to that dispute.[10]

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[9]The quotation at R. 778-779 appears at R. 29-30.
The quotation at R. 779 appears at R. 635.
The quotations at R. 780 appear at R. 642.
The quotation at R. 781 appears at R. 645-646.
The first quotation at R. 782 appears at R. 30.
The second quotation at R. 782 appears at R. 635.
The quotation at R. 782-783 appears at R. 648.
The quotation at R. 783 appears at R. 666.
The quotation in the footnote at R. 784 appears at R. 716.

[10]Respondents' contentions before the Commission, the District Court and the Circuit Court of Appeals cannot be misunderstood. They are set forth in their petition for review of the Commission's decision, at R. 650-672, the assignment of errors in the court below being but a repetition, with unsubstantial modifications, of that petition.

Not only is the point decided by the Circuit Court of Appeals not raised in those contentions, but over and over respondents' statements affirmatively show that the place of dispute was not in issue; that, if a dispute existed, they admitted it existed "at" Karluk, "at" Chignik, and "at" Bristol Bay. For example, in assignment of error V respondents asserted (R. 725):

> "Admitting for the sake of argument that a labor dispute existed * * * it did not exist and was not in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire season * * * but said labor dispute was in active progress at Chignik only from April 1, 1940, to April 12, 1940, and terminated on April 12, 1940, and was not in active progress at Chignik during the balance of the 1940 season;

We give one illustration typical of every other quotation in the opinion. At R. 783 the court says:

> "As before the Commission, they [respondents] contended in assignments (a) to (c) that there was no dispute in active progress within the meaning of the word 'dispute' in Section 5 (d), and also, in assignment (d), that, assuming its existence, it was not 'at' the premises of last employment as follows:
>
> > 'd. The decision is in error in that there is neither finding nor conclusion that petitioners' unemployment during the 1940 salmon canning season was "due" to a labor dispute *in active progress AT the premises where last employed (which means at the conclusion of the 1939 season), and not "due" to other causes.'* (Emphasis supplied.)"

The quotation is from R. 666. An examination of that page and the one following shows that the quoted assignment has no reference whatsoever to the place of dispute. The point urged was that the employers intended to curtail or abandon their operations for reasons other than the labor dispute, and that, therefore, respondents' unemployment was not "due" to the dispute (R. 666-667). This is so clear as not reasonably to be susceptible of misunderstanding.

Briefs in the Circuit Court of Appeals.

The briefs of the parties are quoted and referred to in the opinion of the court below at R. 777, 784, 785. Three

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that said labor dispute was in active progress at Karluk only from April 5, 1940, to April 10, 1940, * * *; that at the commencement of the season at Bristol Bay no labor dispute was in active progress, and no labor dispute existed with respect to the Bristol Bay operations at any time during the 1940 season.'"

briefs were filed, one by respondents, one by the Commission, and one by the employers. Of petitioners' briefs the court says (R. 777): "The Canners' and the Commission's brief attempt to meet appellants' contention only by an inferential treatment of Section 5(d) as if the words 'at the factory,' etc. were to be stricken * * *."

Neither the employers' nor the Commission's brief met any contention as to the place of dispute, inferentially or otherwise. No such contention was raised or in the mind of any party.

The court below also quotes from respondents' brief, stating that that brief raised the "challenging question as to the place of the dispute" (R. 785). No such question was raised. Like the quotations from the record, the quotations from respondents' brief are simply of statements where the statutory language happens to have been used in connection with respondents' contentions above set forth. The court below further says (R. 785) that the "Commission's brief recognizes the challenge of the question of appellants' brief," and that the Commission's "brief says of the appellants' challenging question as to the place of dispute" etc. The Commission's brief did not recognize the challenge of, or say anything concerning, any question as to the place of dispute. No such question was raised in respondents' brief.

Briefs filed in a Circuit Court of Appeals form no part of the record. In this particular situation, however, we feel that this Court will wish to have available copies of the briefs of the parties filed in the Circuit Court of Appeals. We are lodging one copy of each of the briefs filed by petitioners in the court below with the Clerk of

this Court.[11] We have no extra copy of respondents' brief. We suggest that, unless they agree with us that the point decided by the Circuit Court of Appeals was not raised in their brief, they will wish to lodge a copy of their brief with the Clerk of this Court.

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2. IN REVERSING THE FINDINGS AND DECISION OF THE COMMISSION UPON A POINT NOT RAISED IN OR CONSIDERED BY THE COMMISSION OR BY THE DISTRICT COURT, AND NOT RAISED IN THE CIRCUIT COURT OF APPEALS, THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The Alaska Act imposes upon the Commission the administration of the Act and the determination of the validity of claims presented thereunder, subject only to "review" in the courts after administrative remedies have been exhausted. The action of the court below denies the Commission the opportunity to make any determination, initial or otherwise, of the important point decided. The decree remands with direction to enter a final order. The Commission is wholly deprived of the power, in a matter of exceptional importance, to exercise its function of determining the appropriate application of the Act.

See

Phelps Dodge Corp. v. Labor Board (1941) 313 U. S. 177, 196-197;

Regal Knitwear Co. v. Board (1945) 324 U. S. 9, 13.

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[11] Additional copies are not available but will be printed if this Court so directs.

In the *Phelps Dodge* case this Court said:

> "The administrative process will best be vindicated by clarity in its exercise. Since Congress has defined the authority of the Board and the procedure by which it must be asserted and has charged the federal courts with the duty of reviewing the Board's orders (§ 10(e) and (f)), it will avoid needless litigation and make for effective and expeditious enforcement of the Board's order to require the Board to disclose the basis of its order. We do not intend to enter the province that belongs to the Board, nor do we do so. All we ask of the Board is to give clear indication that it has exercised the discretion with which Congress has empowered it. This is to affirm most emphatically the authority of the Board."

The Alaska Act further provides that the Commission shall determine the manner in which disputed claims shall be presented. Its rule in this regard is clear from its decision herein. It held that since respondents took no objection or appeal from the findings of the Referee, they were bound by his ruling (R. 645). The same rule applies to the point made the basis of the decision below. The entire administrative scheme is frustrated if questions as to the application of the statute to particular facts are taken from the hands of the expert administrative tribunal charged with its administration. In usurping the administrative function of the Commission, the decision of the Circuit Court of Appeals is in conflict, not only with the decisions of this Court stating accepted limitations upon judicial review, e.g.,

Helvering v. Wood (1940) 309 U. S. 344, 348-349;
Denver Stock Yard Co. v. U. S. (1938) 304 U. S. 470, 484-485; and

U. S. v. Northern Pacific Ry. Co., 311 U. S. 317, 370-372,

but also with the decisions of this Court cited in the next subdivision of this petition.

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3. IN REVERSING THE FINDING OF THE COMMISSION THAT RESPONDENTS WERE UNEMPLOYED DUE TO A LABOR DISPUTE IN ACTIVE PROGRESS AT THE EMPLOYERS' PLANTS, SUCH FINDING BEING SUPPORTED BY THE EVIDENCE AND HAVING A REASONABLE BASIS IN LAW, THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

Whether or not it be assumed that the question as to the meaning and application of the Alaska Act was presented to and decided by the Commission, the decision of the court below in either event is clearly erroneous and in conflict with applicable decisions of this Court. The Commission held that the facts here constituted a "labor dispute" "in active progress" "at the factory * * * at which [respondents were] last employed." In overturning this administrative finding the court exceeded its province.

The applicable principles have been established by the decisions of this Court:

Board v. Hearst Publications (1944) 322 U. S. 111, 130, 132;

Gray v. Powell (1941) 314 U. S. 402, 411-413;

Rochester Tel. Corp. v. U. S. (1939) 307 U. S. 125, 144-146;

South Chicago Co. v. Bassett (1940) 309 U. S. 251, 257-258.

In the *Hearst* case the administrative tribunal had determined that newsboys were "employees" within the meaning of the National Labor Relations Act. This finding having "warrant in the record" and a "reasonable basis in law" was held to be conclusive. The Court pointed out that the determination of such questions belongs to the usual administrative routine of the Board, and that (322 U. S. 131):

> "• • • where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited. Like the commissioner's determination under the Longshoremen's & Harbor Workers' Act, that a man is not a 'member of a crew' • • • or that he was injured 'in the course of his employment' • • • and the Federal Communications Commission's determination that one company is under the 'control' of another • • •, the Board's determination that specified persons are 'employees' under this Act is to be accepted if it has 'warrant in the record' and a reasonable basis in law."

In the *Rochester Telephone* case the Commission had found that one company was under the "control" of another. This Court pointed out that a finding whether control exists depends upon the facts of each case; that (307 U. S. 145-146):

> "So long as there is warrant in the record for the judgment of the expert body it must stand • • • 'The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.'"

In the *South Chicago* case the question was whether the employee was a member of a "crew." The Court held that the determination of that question had been confided in the Deputy Commissioner. It rejected the contention that the question was purely one of law upon undisputed facts, pointing out that "The word 'crew' does not have an absolutely unvarying legal significance."

In *Gray v. Powell* the question was whether one of the parties was a "producer" of coal within the meaning of the statute. This Court held that the determination of that issue had been vested by the Congress in the administrative body, and that its determination was conclusive upon the courts so long as it rested upon a rational basis (314 U. S., 411-413):

> "Such a determination as is here involved belongs to the usual administrative routine. Congress, which could have legislated specifically as to the individual exemptions from the code, found it more efficient to delegate that function to those whose experience in a particular field gave promise of a better informed, more equitable adjustment of the conflicting interests of price stabilization upon the one hand and producer consumption upon the other. * * *
>
> Where as here a determination has been left to an administrative body, this delegation will be respected and the administrative conclusion left untouched. Certainly a finding on Congressional reference that an admittedly constitutional act is applicable to a particular situation does not require such further scrutiny. Although we have here no dispute as to the evidentiary facts, that does not permit a court to substitute its judgment for that of the Director. * * * It is not the province of a court to absorb the administrative

functions to such an extent that the executive or legislative agencies become mere fact finding bodies deprived of the advantages of prompt and definite action.

* * * To determine upon which side of the median line the particular instance falls calls for the expert, experienced judgment of those familiar with the industry. Unless we can say that a set of circumstances deemed by the Commission to bring them within the concept 'producer' is so unrelated to the tasks entrusted by Congress to the Commission as in effect to deny a sensible exercise of judgment, it is the Court's duty to leave the Commission's judgment undisturbed."

In the case at bar the legislature specifically clothed the Commission with the duty of determining the facts and the application of the statute to those facts. Section 5(d) provides for disqualification

> "For any week with respect to which *the Commission finds* that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; * * *."

The question whether a particular controversy constitutes a labor dispute, and whether that dispute is in active progress, and whether that dispute is at the factory of last employment, are all questions of the same character as whether a party is an employee, or a member of a crew, or a producer, or subject to "control." Whether they be called questions of fact, or mixed questions of law and fact, or questions relating to the application of broad statutory terms to particular facts—the established rule is

that the administrative determination is binding if it has support in the evidence and a basis in reason.[12]

The phrase "dispute * * * in active progress at the factory" does not have an "absolutely unvarying legal significance."[13] A dispute may be in progress "at" a plant if negotiations are in progress on the actual plant premises, but it may also be in progress "at" a plant if the work stoppage arising out of the dispute continues at the plant while negotiations to end it are being conducted across the street, or at any other place at the convenience of the negotiators. It may be in progress "at" all of several plants owned by the same employer although active disputation takes place only at one,[14] or it may be in progress "at" all of several plants owned by several employers while negotiations are conducted by common bargaining agents at one of the plants or elsewhere. All of these are familiar situations.

As pointed out by Judge Healy, the construction given the statute by the court below "distorts the statutory policy and ignores the actualities of this seasonal operation" (R. 792). Men for the Alaska fishing operations are hired each year at San Francisco, Portland and Seattle.

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[12]State decisions construing statutes identical in substance to the Alaska Act are in accord.

In *Johnson v. Pratt* (1942) 200 S.C. 315, 20 S.E. (2d) 865, 870-881, the court held that the question whether a labor dispute existed, and whether claimants' unemployment was directly "due" to it, were questions of fact as to which the Commission's determination, if supported, was conclusive.

A like case is *Ex parte Pesnell* (1940) 240 Ala. 457, 199 So. 726, certiorari denied, 313 U.S. 590.

[13]*South Chicago Co. v. Bassett* (1940) 309 U.S. 251, 258, supra.

[14]See: *Chrysler Corporation v. Smith* (1941) 297 Mich. 438, 298 N.W. 87.

They return to these cities each year and live there. Many unions are involved in the whole Alaskan operations. Their headquarters, their officers, are in San Francisco, Portland and Seattle. For more than forty years—since prior to 1901—negotiations concerning working conditions for the Alaskan fishing and canning season have been carried on every year at San Francisco; for some of these years at Seattle. Agreements must be reached before the opening of the season. Negotiations must occur when it would be impracticable, if not impossible, to be in Alaska. It is a matter of judicial knowledge that Bristol Bay is ice-bound during the winter; inaccessible by boat. Except for planes which now fly in on skis, the only way to reach the plants in winter is by dog team through the arctic night. Karluk and Chignik on the southern side of the Alaska Peninsula can be reached by boat, but it would be nearly as difficult to arrange for off-season labor negotiations there as at Bristol Bay. Further, under the decision of the Circuit Court of Appeals it would be necessary, if one union were the bargaining agent for all of the men, to go from plant to plant and re-enact the dispute before the statutory disqualification would apply.

The decision not only ignores these actualities of Alaskan seasonal operations, but also the actualities and history of American labor relations in general. Unions frequently and fairly demand "neutral grounds" for the settlement of disputes. Numerous negotiations—certainly many of the most important—are conducted by representatives of all workers in many widely-separated plants under different managements. The negotiations between the United Mine Workers and the coal operators in 1939,

carried on by John L. Lewis and others at New York and Washington and referred to in the decisions hereinafter cited,[15] are familiar examples.

The Commission applied the Alaska Act in a rational manner to undisputed facts. The Circuit Court of Appeals in setting the decision aside exceeded its province in a manner in conflict with the decisions of this Court.

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4. THE RULING OF THE COURT BELOW THAT THE DISQUALIFICATION PROVIDED IN SECTION 5(d) OF THE ALASKA ACT IS NOT APPLICABLE UNLESS THE LABOR DISPUTE PHYSICALLY TAKES PLACE AT THE PARTICULAR FACTORY AT WHICH THE PARTICULAR CLAIMANT WAS LAST EMPLOYED IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURTS OF TENNESSEE, INDIANA, WEST VIRGINIA, IOWA, COLORADO AND ALABAMA, AND WITH THE DECISIONS OF CIRCUIT COURTS IN OREGON AND WEST VIRGINIA.

So far as our research discloses, the exact point has been raised in only one case, *Koski, et al. v. UCC, et al.*, C.C.H. Unemployment Insurance Service, Oregon, par. 8046. Of it, the court said:

> "There remains the question as to whether this labor dispute is one which under the statute constitutes a disqualification barring these claimants from unemployment compensation. Counsel for plaintiff urges that it is not. Counsel's theory is that Section 126-705, O.C.L.A., excludes this conclusion by the provision that the labor dispute must be one 'in active progress at the factory, establishment or other premises' in or on which the employee works; and counsel

[15] Page 24, infra.

argues that any dispute which existed did not take place upon the premises of these employers. This argument cannot be taken seriously by the Court, and evidently was not by the Commission. If the interpretation given by counsel is to be applied to the statute, it would result in the admittedly ridiculous situation where any kind of labor dispute could be carried on without disqualifying the men from getting unemployment compensation, provided only the disputants kept off the real property of the employer. This could not have been the intention of the Legislature, and in the opinion of this Court the statute must be interpreted as meaning a dispute which affects the wages, hours or conditions of labor at the factory, establishment or other premises involved, regardless of where the disputing is done."

The decision of the court below is also in conflict with *Block Coal & Coke Co. v. United Mine Workers, Etc.* (1941) 177 Tenn. 364, 148 S.W. (2d) 364; *Miners in General Group v. Hix* (W. Va. Sup. Ct., 1941) 17 S.F (2d) 810; *Dallas Fuel Co. v. Horne* (1941) 230 Iowa, 1148, 300 N.W. 303; *Department of Industrial Relations v. Pesnell* (1940) 29 Ala. App. 528, 199 So. 720 (affirmed, *Ex parte Pesnell* (1940) 240 Ala. 457, 199 So. 726, cert. den., 313 U. S. 590); *Sandoval v. Industrial Commission* (1942) 110 Colo. 108, 130 P. (2d) 930; *Walter Bledsoe Coal Co. v. Review Board, Etc.* (Ind. Sup. Ct., 1943) 46 N.E. (2d) 477; *Moore et al. v. Board of Review* (C.C., W. Va., 1940) C.C.H. Unemployment Insurance Service (W. Va.), par. 1980.01.

All of these cases arose out of the dispute in 1939 between United Mine Workers of America and the operators of coal mines in the various states. In each case there was

a stoppage of work pending negotiation of contracts. Negotiations were carried on by John L. Lewis and his associates, and by the representatives of the operators, in New York City and Washington, D. C. In all cases claims for unemployment compensation were filed and ultimately denied under the labor dispute disqualification provisions of the several acts—all identical with the provision in the Alaska Act. While the exact point decided by the court below was not raised by any of the employees,[16] its decision was necessarily involved since the negotiations occurred "at" New York and Washington and not "at" the various mines. The construction given to the statutory provision by the courts in each of these cases is illustrated by the following quotation from the *Block Coal & Coke Co.* case (148 S.W. (2d), p. 366):

> "The dispute was wholly with respect to matters relating to such labor, and we are unable to reach any other conclusion than that a labor dispute was in active progress throughout the period here involved touching the continuation or resumption of work at the premises at which each of these claimants 'was last employed.'"

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5. THE QUESTION PRESENTED IS ONE OF IMPORTANCE WHICH SHOULD BE DECIDED BY THIS COURT.

The decision below is important to the Unemployment Compensation Commission of Alaska and to the Territory of Alaska. As the Referee pointed out (R. 642):

> "The Referee is conscious of the fact that his conclusion, if sustained by the Commission or the Court,

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[16] We suggest this point was not raised because of its unsubstantial character.

will mean the practical exhaustion of the Unemployment Compensation fund of the Territory. * * *."

Beyond this, the decision if unreversed will seriously handicap all labor negotiations relating to Alaskan industries, particularly seasonal industries.[17] Employers will be reluctant to negotiate seasonal contracts at any place but at their respective plants in Alaska, notwithstanding the fact that during the months when negotiations must take place the plants are closed and virtually inaccessible, and the workers and employers are in the United States. This burden, great on the employers, will fall even more heavily on the workers. The creation of such a situation is unwarranted and defeats the purposes of the Act.

But the decision has more than local significance. It is a precedent of nationwide application in the important field of labor relations, and in a portion of that field closely integrated with federal law. Under the sponsorship of the Congress, through Title IX of the Social Security Act (49 Stat. 620, 639),[18] forty-three states, the District of Columbia, and the Territory of Hawaii have enacted unemployment compensation acts containing labor dispute disqualification provisions identical to the provisions of Section 5(d) of the Alaska Act here involved.[19] The decision below—bear-

[17]These include not only the fishing and canning operations—the largest single industry in Alaska, but also among others, the important placer mining industry.

[18]Now incorporated in the Internal Revenue Code, 26 U.S.C. 1600-1611.

[19]Alabama Unemployment Compensation Law sec. 214A (General Acts Alabama 1935, pp. 950, 958, as amended by General Acts Alabama 1943, p. 291).

Employment Security Act of Arizona, sec. 56-1005 (d) (Ch. 13, Session Laws of Arizona 1936, 1st Spec. Sess., 53, 63, as amended by Ch. 68, Session Laws 1937, p. 276).

ing the authority of the only Federal Circuit Court of Appeals ever likely to pass upon the point—is a direct precedent as to the construction of all of these statutes. The ad-

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Arkansas Employment Security Act sec. 5 (d) (Act 155, Acts of Arkansas 1937, pp. 529, 542, as amended by Act 391, Acts 1941, p. 1109).

California Unemployment Insurance Act, sec. 56 (Ch. 352 Statutes of California 1935, pp. 1226, 1238, as amended by Ch. 7 Statutes of California 1939, p. 8, (Deering's California Gen. Laws, Act 8780 d)).

Connecticut Unemployment Compensation Law sec. 1339c (b) (3) (Ch. 280a, 1937 Supp. To Conn. Gen. Stats. pp. 444, 453, as amended by Ch. 280a, 1941 Supp. to Conn. Gen. Stats. p. 386).

Delaware Unemployment Compensation Law sec. 5 (d) (Ch. 258, Laws of Delaware 1937, pp. 742, 754).

District of Columbia Unemployment Compensation Act sec. 10 (f) (49 United States Statutes at Large, pp. 946, 950, as amended by 57 United States Statutes at Large, p. 115).

Florida Unemployment Compensation Law sec. 443.06 (4) (Ch. 18402, Laws of Florida 1937, pp. 1292, 1303, as amended by Ch. 443, Florida Statutes 1941, § 443.06 (4)).

Georgia Unemployment Compensation Law sec. 5 (d) (Act No. 335, Georgia Laws 1937, pp. 806, 813).

Illinois Unemployment Compensation Act sec. 7 (d) (Laws of Illinois Sixtieth Gen. Assembly 1937, pp. 571, 580).

Indiana Employment Security Act, sec. 7 (f) (3) (Ch. 4, Indiana Acts 1936 Special Session pp. 80, 95, as amended by Ch. 286, Acts 1943, p. 840).

Iowa Employment Security Law sec. 1551.11 (D) (Ch. 102, Iowa Laws of 1937, pp. 144, 148. Code of Iowa 1939, § 1551.11 (D)).

Kansas Unemployment Compensation Law sec. 44-706 (d) (Ch. 255, Laws of Kansas 1937, pp. 360, 366, as amended by Ch. 264, Laws of Kansas 1941, p. 405).

Kentucky Unemployment Compensation Law sec. 341.360 (Ch. 50, Kentucky Acts 1938, pp. 298, 330, as amended by Kentucky Revised Statutes 1942, §341.360).

Louisiana Unemployment Compensation Law sec. 4 (d) (Act No. 97, Acts State of Louisiana 1936, pp. 326, 332, as amended by Act No. 160, Acts 1944, p. 450).

Maine Unemployment Compensation Law sec. 5 (d) (Ch. 192, Laws of Maine 1937 (Spec. Sess. 1936) pp. 1, 5).

Maryland Unemployment Compensation Law sec. 5 (d) (Ch. 1, Laws of Maryland Extraordinary Session 1936, pp. 3, 8, as amended by Ch. 278, Laws 1939, p. 493).

Massachusetts Employment Security Law sec. 25 (b) (Ch. 151A of General Laws, created by Ch. 479 Acts Massa-

ministration of each of these acts is financed in part by the Federal Government and is a matter of direct concern to the Federal Government. If the decision of the Circuit

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chusetts 1935, pp. 637, 644, as amended by Ch. 685, Acts 1941, p. 1010).

Michigan Unemployment Compensation Law sec. 29 (c) (Public Act No. 1, Michigan Extra Session 1936, pp. 3, 13, as amended by Public Acts 1943—No. 246, p. 453).

Minnesota Employment and Security Law sec. 268.09 sub. 1 (6) (Ch. 2, Laws of Minnesota 1936 Extra Session, pp. 6, 19, as amended by Ch. 650, Laws 1943, p. 1058).

Mississippi Unemployment Compensation Law sec. 7379 (e) (Ch. 176, General Laws of Mississippi, 1936, pp. 279, 284, as amended by Ch. 288, General Laws 1944, p. 510 (1944 Supp. to Mississippi Code 1942, § 7379 (e))).

Missouri Unemployment Compensation Law sec. 9431 (II) (Laws of Missouri 1937, pp. 574, 591, as amended by Laws 1941, p. 611).

Montana Unemployment Compensation Law sec. 5 (d) (Ch. 137, Laws of Montana 1937, pp. 424, 429).

Nebraska Placement and Unemployment Insurance Law sec. 48-628. (d) (Ch. 108, Laws of Nebraska 1937, pp. 369, 378, as amended by C. S. Supp. Nebr. 1941, § 48-705).

Nevada Unemployment Compensation Law sec. 5 (d) (Ch. 129, Statutes of Nevada 1937, pp. 262, 270, as amended by Ch. 175, Statutes 1943, p. 247).

New Hampshire Unemployment Compensation Law sec. 4 (D) (Ch. 99, N. H. Laws 1935, pp. 154, 164, as amended by Ch. 103, N. H. Laws 1941, p. 134).

New Jersey Unemployment Compensation Law sec. 43:21-5 (d) (Ch. 270, Laws of New Jersey 1936, pp. 1045, 1049).

New Mexico Unemployment Compensation Law sec. 57-805 (d) (Ch. 1, Laws of New Mexico 1937 (Spec. Sess. 1936) pp. 1, 5, as amended by Ch. 103, Laws 1943, p. 185).

New York Unemployment Insurance Law sec. 592 (1) (Ch. 468, Laws of New York 1935, pp. 1028, 1032, as amended by Ch. 705, Laws 1944, p. 1532).

North Carolina Unemployment Compensation Law sec. 96-14 (d) (Ch. 1, Public Laws of North Carolina Extra Session 1936, pp. 1, 4).

North Dakota Unemployment Compensation Law sec. 52-0602 (4) (Ch. 232, Laws of North Dakota 1937, pp. 414, 426, as amended by Ch. 261, Laws 1941, p. 457).

Ohio Unemployment Compensation Law sec. 1345-6 (d) (H.B. 608, Laws of Ohio 1935 and 1936 (1st Sp. Sess. 1935) pp. 286, 293, as amended by Laws of Ohio 1943, p. 683 (Ohio General Code, sec. 1345-6 (d))).

Court of Appeals is allowed to stand it will be a precedent impairing labor relations and impeding the settlement of labor disputes throughout the nation. Employers and em-

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Oregon Unemployment Compensations Law sec. 126-705 (d) (Ch. 70, Oregon Laws Special Session 1935, pp. 150, 155, as amended by Ch. 515, Laws 1939, p. 1072).

Rhode Island Unemployment Compensation Law sec. 7 (4) (Ch. 2333, Public Laws of R. I. 1936, pp. 829, 848, as amended by Ch. 2556, Public Laws, 1937, p. 283).

South Carolina Unemployment Compensation Law sec. 7035-85 (d) (Act No. 946, Acts S. C. 1936, pp. 1716, 1721, as amended by Act No. 316, Acts 1939, p. 492).

South Dakota Unemployment Compensation Law sec. 17.0830 (4) (Ch. Session Laws of South Dakota 1937, pp. 4, 7, as amended by Ch. 84, Session Laws 1943, p. 90).

Tennessee Unemployment Compensation Law sec. 5 (d) (Ch. 1, Public Acts Tennessee Extraordinary Session 1936, pp. 19, 25, as amended by Ch. 131, Public Acts 1939, p. 511).

Texas Unemployment Compensation Law sec. 5 (d) (Ch. 482, General and Special Laws Texas Third Called Session 1936, pp. 1993, 1998, as amended by Ch. 2, General Laws 1939, p. 438).

Vermont Unemployment Compensation Law sec. 5 (d) (Act No. 1, Laws of Vermont Second Special Session 1936, pp. 496, 502).

Virginia Unemployment Compensation Act sec. 5 (d) (Ch. 1, Acts of Assembly Virginia Extra Session 1936, pp. 3, 10, as amended by Ch. 317, Acts of Assembly 1942, p. 459).

Washington Unemployment Compensation Act sec. 5 (f) (Ch. 162, Laws of Washington 1937, pp. 574, 581, as amended by Ch. 253, Laws 1941, p. 878).

West Virginia Unemployment Compensation Law sec. 4 (4) (Ch. 1, Acts of West Virginia Second Extraordinary Session 1936, pp. 1, 24, as amended by Ch. ____ (SB 182), Acts 1945).

Wisconsin Unemployment Reserves and Compensation Act sec. 108.04 (5) (a) (Ch. 20, Laws of Wisconsin Special Session 1931, pp. 57, 63, as amended by Ch. 192, Laws 1935, p. 292).

Wyoming Employment Security Law sec. 5 (B) (II) (Ch. 113, Session Laws of Wyoming 1937, pp. 183, 189, as amended by Ch. 96 Laws 1941, p. 99).

Hawaii Unemployment Compensation Law sec. 5 (d) (Ch. 260A, Laws of Hawaii 1937, pp. 293, 303, as amended by Ch. 260A, Session Laws 1941, p. 377).

In the Alabama, California, District of Columbia, Kentucky, Michigan, Missouri, New York, Rhode Island, South Carolina and Wisconsin statutes the phrase reads, "in the factory," etc. In the remaining statutes the phrase reads, "at the factory."

ployees will be seriously handicapped in their efforts to negotiate on neutral ground, or at points of common convenience, or at one common place where disputes involve more than one plant.

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6. THE DECISION OF THE COMMISSION AND OF THE DISTRICT COURT AFFIRMING IT ARE CORRECT.

What we already have said demonstrates, we submit, that the Commission's decision on the points raised before it is supported by the evidence and has a reasonable basis in law. It is therefore conclusive. Respondents' contentions are all considered and answered in the thorough opinion of the District Court (R. 692). That opinion is in accord with all pertinent decisions under comparable statutes.[20]

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[20]In addition to the cases cited in the opinion of the District Court, namely:

Miners in General Group v. Hix (W. Va. Sup. Ct., 1941) 17 S.E. (2d) 810;

Department of Industrial Relations v. Pesnell (1940) 29 Ala. App. 528, 199 So. 720;

Ex parte Pesnell (1941) 240 Ala. 457, 199 So. 726 (cert. den., 313 U.S. 590);

Barnes v. Hall (1941) 285 Ky. 160, 146 S.W. (2d) 929;

Block Coal & Coke Co. v. United Mine Workers, Etc. (1941) 177 Tenn. 364, 148 S.W. (2d) 364;

Deshler Broom Factory v. Kinney (1942) 140 Neb. 889, 2 N.W. (2d) 332;

Latham v. State Unemployment Compensation Com'n (1941) 167 Ore. 371, 117 P. (2d) 971,

the following cases directly support the court's conclusions:

Dallas Fuel Co. v. Horne (1941) 230 Iowa 1148, 300 N.W. 303;

Walter Bledsoe Coal Co. v. Review Board, Etc. (Ind. Sup. Ct., 1943) 46 N.E. (2d) 477;

Sandoval v. Industrial Commission (1942) 110 Colo. 108, 130 P. (2d) 930;

In re North River Logging Co. (1942) 15 Wash. (2d) 204, 130 P. (2d) 64;

CONCLUSION.

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Dated, San Francisco, California,
August 8, 1945.

Respectfully submitted,

E. COKE HILL,
Attorney for Alaska Unemployment Compensation Commission.

MARSHALL P. MADISON,
FRANCIS R. KIRKHAM,
MELVIN E. MENSOR,
Attorneys for Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company.

Johnson v. Pratt (1942) 200 S.C. 315, 20 S.E. (2d) 865;
Moore. Et Al. v. Board of Review (C.C., W. Va., 1940) C.C.H. Unemployment Insurance Service (W. Va.), par. 1980.01;
New Jersey Board of Review Decision No. BR-52L, C.C.H. Unemployment Insurance Service (N.J.), par. 1980.03;
Pennsylvania Board of Review Decision No. B-44-6-RG-503, C.C.H. Unemployment Insurance Service (Pa.), pars. 1980.013, 1980.019.

(Appendix Follows.)

Appendix

ALASKA UNEMPLOYMENT COMPENSATION LAW.

(Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws, 1939)

Be it enacted by the Legislature of the Territory of Alaska:

DECLARATION OF TERRITORIAL PUBLIC POLICY. As a guide to the interpretation and application of this Act, the public policy of this Territory is declared to be as follows:

Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection aganst this greatest hazard of our economic life. This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory, require the enactment of this measure, under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used

for the benefit of persons unemployed through no fault of their own.

• • • • • • • •

Section 2. DEFINITIONS. • • •

(c) • • • provided, however, that if an individual has earned wages only in a seasonal industry, his claim shall not be valid until the beginning of the claimant's next recurring seasonal period.

• • • • • • •

Section 3. BENEFITS. • • •

(c) As used in this subsection the term "seasonal industry" means an occupation or industry in which, because of the seasonal nature thereof it is customary to operate only during a regularly recurring period or periods of less than one year in length. The Commission shall, after investigating and hearing, determine, and may thereafter from time to time redetermine, the longest seasonal period or periods during which, by the best practice of the occupation or industry in question, operations are conducted. Until such determination by the Commission no occupation or industry shall be deemed seasonal.

(d) • • •

(2) Notwithstanding the foregoing provisions of the subsection, seasonal wage credits shall be available only with respect to weeks of unemployment occurring in whole or in part within the longest seasonal period (as determined pursuant to subsection (c) of this section) of the industry from which they were earned.

The term "seasonal wage credits" means wage credits based upon wages for employment by employers earned from a seasonal industry during the longest seasonal period, as determined by the Commission pursuant to subsection (e) of this section.

* * * * * * *

Section 5. DISQUALIFICATION FOR BENEFITS. An individual shall be disqualified for benefits:

* * * * * * *

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute;

* * * * * * *

Section 6. CLAIMS FOR BENEFITS.

* * * * * * *

(b) "Initial Determination." An examiner designated by the Commission shall take the claim. An initial determination thereon shall be made promptly and shall include a determination with respect to whether or not benefits are payable, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum duration of benefits. In any case in which the payment or denial of benefits will be determined by the provisions of section 5(d) of this Act, the examiner shall promptly transmit all the evidence with respect to that subsection to the Commission. The Commission, or such representative as it may designate for such purpose,

shall, on the basis of the evidence so submitted and such additional evidence as it may require, make an initial determination with respect thereto. An initial determination may for good cause be reconsidered. * * * The claimant or any party to the determination may file an appeal from such initial determination * * *.

(c) "Appeals." An appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall unless such appeal is withdrawn affirm or modify the findings of fact and initial determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of the section.

(d) "Appeal Tribunals." To hear and decide disputed claims, the Commission shall appoint one or more impartial appeal tribunals consisting in each case of a referee, selected in accordance with Section 11(d) of this Act. No person shall participate on behalf of the Commission in any case in which he is an interested party.

(e) "Commission." The Commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties of such decision to initiate further appeals before it. The Commission shall permit such further appeal by any of the parties to a decision of an appeal tribunal, and by the ex-

aminer whose decision has been overruled or modified by an appeal tribunal. The Commission may remove to itself to transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard by a quorum thereof in accordance with the requirements of subsection (c) of this Section. The Commission shall promptly notify the parties to any proceedings of its findings and decisions.

(f) "Procedure." The manner in which disputed claims shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Commission for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded unless a written stipulation to the contrary is signed by both parties and filed with the examiner, but need not be transcribed unless the disputed claim is further appealed.

* * * * * * *

(h) "Appeal to Courts." Any decision of the Commission in the absence of an appeal therefrom as herein provided shall become final thirty days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by this Act. The Commission shall be deemed to be a party to any judicial action

involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the Commission and designated by it for that purpose, or at the Commission's request by the Attorney General.

(i) "Court Review." Within thirty days after the decision of the Commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the United States District Court against the Commission for the review of such decision, in which action any other party to the proceeding before the Commission shall be made a defendant. * * * In any judicial proceeding under this Section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. * * * An appeal may be taken from the decision of the United States District Court as is provided in civil cases.

* * * * * * *

Section 11. ADMINISTRATION.

(a) "Duties and Powers of Commission." It shall be the duty of the Commission to administer this Act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner not inconsistent with the provisions of this Act, which the Commission shall prescribe. The Commission shall determine its own organization and methods of procedure in

accordance with the provisions of this Act, and shall have an official seal which shall be judicially noticed. • • •

(b) "Regulations; General and Special Rules." General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective thirty days after filing with the Secretary of the Territory and publication in one newspaper of general circulation in each of the four judicial divisions of the Territory for such period as the Commission may prescribe. Special rules shall become effective thirty days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission.

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(e) "Advisory Councils." The Commission shall appoint a Territorial advisory council and may appoint local or industry advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment or affiliations, and of such members representing the general public as the Commission may designate. Such councils shall aid the Commission in formulating policies and discussing problems related to the administration of this Act and in assuring impartiality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary expense.